

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**3:10cv468-02-W  
(3:04cr266-01-W)**

**(APPEAL NO. 10-7671)**

**DAVID LAMAR BUTLER,**  
**Petitioner,**

**v.**

**UNITED STATES OF AMERICA,**  
**Respondent.**

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**ORDER**

**THIS MATTER** comes before the Court upon the Order of the Fourth Circuit Court of Appeals, filed December 3, 2010, remanding this matter to the undersigned for the limited purpose of supplementing the record with an Order either granting or denying a certificate of appealability. (Doc. No. 7).

The record reflects that on September 21, 2010, Petitioner filed a Motion to Vacate under 28 U.S.C. § 2255 (Doc. No. 1). On November 17, 2010, the Court entered an Order dismissing that Motion for its failure to state a claim for relief. (Doc. No. 2). On December 1, 2010, Petitioner filed a Notice of Appeal. (Doc. No. 4). Such Notice was transmitted to the Fourth Circuit Court of Appeals along with an electronic copy of the record of Petitioner's case. However, the Court of Appeals has remanded the case for the limited purpose of allowing this Court to consider whether or not to issue a certificate of appealability. (Doc. No. 7).

Having carefully reviewed this matter, in accordance with Rule 11(a) of the Rules Governing Section 2255 Proceedings, the Court declines to issue a certificate of appealability as Petitioner has not made "a substantial showing of the denial of a constitutional right" as required

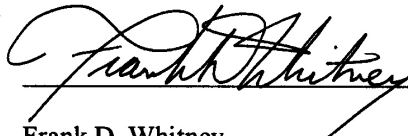
under 28 U.S.C. § 2253(c)(2). See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong) (citing Slack v. McDaniel, 529 U.S. 473, 484-85 (2000)).

**NOW, THEREFORE, IT IS HEREBY ORDERED that:**

1. The Court declines to issue a certificate of appealability for Petitioner's appeal; and
2. The Clerk shall send a copy of this Order to the Clerk of the Fourth Circuit Court of Appeals.

**SO ORDERED.**

Signed: December 10, 2010

  
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Frank D. Whitney  
United States District Judge

